

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

23

DECISION

TOPIC

**Final Rule - Chapter 64 by adding language to start collecting a fee for
wastewater permits**

The attached adopted and filed rule for changes to Chapter 64 “Wastewater Construction and Operation Permits” is being presented to the Environmental Protection Commission for decision. The amendment adds language and new requirements to section 64.16 to set and implement a fee structure for wastewater permits in the state of Iowa.

The Notice of Intended Action (NOIA) was published in the Iowa Administrative Bulletin on November 9, 2005 as **ARC 4652B**. Three public hearings were held through the Iowa Communications Network with notice of the hearings sent to various individuals, organizations, and associations, and to statewide news network organizations. The hearings were broadcast from Des Moines to a total of fifteen cities across the State. Comments were received from 28 persons and organizations. A responsiveness summary addressing the comments can be obtained from the Department of Natural Resources.

The adopted amendments have been modified from those published under the NOIA. The adopted amendment is modified from the one published to include changes to the fee structure made by the legislators during the 2006 Iowa Legislative Session. The adopted amendment will implement HF 2540 as amended. Also, the language concerning the fees for individual storm water only permits in 64.16(1) has been clarified, definitions of the terms “storm water only permit” and “non-storm water NPDES permit” have been added, language concerning non-storm water NPDES permit amendment requests has been clarified, and the due date for the fees has changed from those in the NOIA.

The ARRC requested that the Department perform a Regulatory Analysis of the proposed fees at their December 13, 2005 meeting. The summary of the Regulatory Analysis was published in the IAB on March 15, 2006, and a public hearing concerning the analysis was held on April 6, 2006. There were no persons in attendance at the public hearing, and no comments were received.

The following is a summary of the proposed amendments to the rules:

- Fee requirements as established in the Code of Iowa §455B.197 are added to 64.16(3)(a)(5) for NPDES General Permit No. 5 (Mining and Processing Facilities).
- The fee requirements in 64.16(3)(b) are changed to remove the annual fee option for individual storm water permits and to remove the storm water group application category.
- Definitions of the terms “storm water only permit” and “non-storm water NPDES permit” are added to 64.16(1).
- Fee requirements as established in the Code of Iowa §455B.197 are added to 64.16(3)(b) for municipal, semi-public, industrial, operation, and animal feeding operation facilities subject to NPDES permits.

- Each type of facility subject to a non-storm water NPDES permit will have an individual monetary amount associated with it, and the fees will be assessed for each facility on an annual basis.
- No annual wastewater fees will be assessed for municipal water treatment facilities (as noted in the Code of Iowa §455B.197).
- The annual non-storm water NPDES fees will be due by August 30 of each year.
- A one-time application fee as established in the Code of Iowa §455B.197 will be assessed for each non-storm water application for a NPDES permit.
- A one-time fee equal to the permit application fee will be assessed for permit amendment requests from the facility holding a non-storm water NPDES permit.
- Fee requirements as established in the Code of Iowa §455B.197 are added to 64.16(3)(c) for construction permits.
- Fees for storm water individual permits and construction permits will be assessed with the permit application.
- The rules will become effective on August 23, 2006.

Courtney Cswercko, Environmental Specialist
 NPDES Section, Environmental Services Division
 June 2, 2006

ENVIRONMENTAL PROTECTION COMMISSION [567]

Adopted and Filed

Pursuant to the authority of Iowa Code Section 455B.173 and 455B.105(11), the Environmental Protection Commission proposes to amend Chapter 64, “Wastewater Construction and Operation Permits”, Iowa Administrative Code.

The amendment adds and implements a fee structure for wastewater permits.

The Notice of Intended Action was published in the Iowa Administrative Bulletin on November 9, 2005 as **ARC 4652B**. The adopted amendment is modified from the one published to clarify language concerning the individual storm water permits, to define the term “non-storm water NPDES permit”, to clarify language concerning NPDES permit amendment requests, to change the fee due date, and to include changes to the fee structure made by the Iowa Legislature. The adopted amendment will implement HF 2540 as amended. Specifically:

- 64.16(1) is changed to remove the annual fee option for individual storm water only permits, to clarify the need for some facilities to pay both storm water only permit fees and non-storm water NPDES permit fees, to define the term “storm water only permit”, and to define the term “non-storm water NPDES permit”.
- 64.16(2) is changed to direct all fees to the Department of Natural Resources.
- 64.16(2) is changed to clarify the requirements for facilities that need to pay both storm water only permit fees and non-storm water NPDES fees.
- 64.16(3)(a)(5) is changed to add references to the fees for General Permit #5 as established in the Code of Iowa §455B.197.

- 64.16(3)(b) is changed to add references to the application and annual non-storm water NPDES fees as established in the Code of Iowa §455B.197, and to change the fee due date.
- 64.16(3)(b)(3) is changed to clarify the submittal of an application fee for an approved non-storm water NPDES permit amendment request.
- 64.16(3)(c) is changed to add a reference to the single construction permit fee as established in the Code of Iowa §455B.197.

Public comments received were summarized and a responsiveness summary was prepared.

These amendments were adopted by the Environmental Protection Commission on June 19, 2006.

This amendment is intended to implement Iowa Code sections 455B.173, 455B.197 and 455B.105(11).

The effective date for this amendment is August 23, 2006.

The following amendments are adopted.

ITEM 1. Amend subrule 64.16(1) as follows:

64.16(1) A person who applies for an individual permit or coverage under a general permit to construct, install, modify or operate a disposal system shall submit along with the application an application fee ~~and~~ or a permit fee or both as specified in 64.16(3). Certain individual facilities shall also be required to submit annual fees as specified in 63.16(3)“b.” Fees shall be assessed based on the type of permit coverage the applicant requests, either as general permit coverage or as an individual permit. ~~At the time the application is submitted,~~ For a construction permit, an application fee must be submitted with the application. For general permits Nos. 1, 2, 3 and 5,

the applicant has the option of paying an annual permit fee or a multiyear permit fee at the time the Notice of Intent for coverage is submitted.

For individual storm water only permits, a one-time, multiple-year fee must be submitted at the time of application. A storm water only permit is defined as a NPDES permit that authorizes the discharge of only storm water and any allowable non-storm water as defined in the permit. For all other non-storm water NPDES permits and operation permits, the applicant must submit an application fee at the time of application and the appropriate annual fee on a yearly basis. A non-storm water NPDES permit is defined as any individual NPDES permit or operation permit issued to a municipality, industry, semi-public, or animal feeding operation that is not an individual storm water only permit. If a facility needs coverage under more than one NPDES permit, fees for each permit must be submitted appropriately.

Fees are nontransferable. If the application is returned to the applicant by the department, the permit fee will be returned. No fees will be returned if the permit or permit coverage is suspended, revoked, or modified, or if the activity is discontinued. Failure to submit the appropriate ~~permit~~ fee at the time of application renders the application incomplete and the department shall suspend processing of the application until the fee is received. Failure to submit the appropriate annual fee may result in revocation or suspension of the permit as noted in 64.3(11)“f.”

ITEM 2. Amend subrule 64.16(2) as follows:

64.16(2) Payment of fees. Fees shall be paid by check or money order made payable to the “Iowa Department of Natural Resources.”

For facilities needing coverage under both a storm water only permit and a non-storm water NPDES permit, separate payments shall be made according to the fee schedule in 64.16(3).

ITEM 3. Amend subrule 64.16(3) as follows:

64.16(3) Fee schedule. The following fees have been adopted:

a. For coverage under ~~the NPDES General Permit~~ general permits, the following fees apply:

(1) Storm Water Discharges Associated with Industrial Activity, NPDES General Permit No. 1.

Annual Permit Fee	\$150 (per year)
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or

Five-year Permit Fee	\$600
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Four-year Permit Fee	\$450
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Three-year Permit Fee	\$300
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(Coverage provided by the five-year, four-year, and three-year permit fees expires no later than the expiration date of the general permit. Maximum coverage is five years, four years, and three years, respectively.) All fees are to be submitted with the Notice of Intent for coverage under the general permit.

(2) Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2. The fees are the same as those specified for General Permit No. 1 in subparagraph (1) of this paragraph.

(3) Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, and Rock Crushing Plants, NPDES General Permit No. 3. The fees are the same as those specified for General Permit No. 1 in subparagraph (1) of this paragraph.

(4) “Discharge from Onsite Wastewater Treatment and Disposal Systems,” NPDES Permit No.

4. No fees shall be assessed.

(5) “Discharge from Mining and Processing Facilities,” NPDES General Permit No. 5. ~~No fees shall be assessed.~~ Fees as established in Code of Iowa 455B.197 are to be submitted by August 30

of every year unless a multiple year fee payment was received in an earlier year. New facilities seeking general permit #5 coverage in any month but August shall submit fees with Notice of Intent for coverage. Coverage provided by the five-year, four-year, three-year permit fees expires no later than the expiration date of the general permit. Maximum coverage is five years, four years, and three years, respectively. In the event a facility is no longer eligible to be covered under general permit #5, the remainder of the fees previously paid by the facility would be applied toward its individual permit fees.

b. Individual NPDES and operation permit fees. The following fees are applicable for the described individual NPDES permit:

(1) For permits that authorize the discharge of only storm water ~~discharge~~ associated with industrial activity and any allowable non-storm water, ~~submitted on Form 2F, where the storm water is composed entirely of storm water or combined with process wastewater or other non-stormwater wastewater.~~, a five-year permit fee of \$1,250 must accompany the application.

Annual Permit Fee _____ \$300 (per year)

or

Five-year Permit Fee _____ \$1,250

(2) For permits that authorize the discharge of only storm water ~~discharges~~ from municipal separate storm sewer systems and any allowable non-storm water, a five-year permit fee of \$1,250 must accompany the application.

Annual Permit Fee _____ \$300 (per year)

or

Five-year Permit Fee _____ \$1,250

(3) ~~For participants in an approved group application and EPA has issued a model general permit and no industry-specific general permit is available or being developed.~~

Annual Permit Fee _____ \$300 (per year)

or

Five year Permit Fee _____ \$1,250

(3) For permits not subject to paragraphs (1) and (2), a single application fee of \$85 as established in the Code of Iowa §455B.197 is due at the time of application. The application fee is to be submitted with the application form (Form 30 for municipal and semipublic facilities; Form 1, 2, 2F, 3, and/or 4 for industrial facilities) at the time of a new application, renewal application, or amendment application or request. Before an approved amendment request submitted by a facility holding a non-storm water NPDES permit can be processed by the Department, the application fee must be submitted. Application fees will not be charged to facilities holding non-storm water NPDES permits when an amendment request is submitted by DNR staff, or when the requested amendment is to correct an error in the permit.

(4) For every major and minor municipal facility, every semipublic facility, every major and minor industrial facility, every facility that holds an operation permit (no wastewater discharge into surface waters), and every open feedlot animal feeding operation required to hold a non-storm water NPDES permit, an annual fee as established in the Code of Iowa §455B.197 is due by August 30 of each year.

(5) For every municipal water treatment facility with a non-storm water NPDES permit, no fee is charged (as established in the Code of Iowa §455B.197).

(6) For a confinement animal feeding operation required to hold a non-storm water NPDES permit, an annual fee of \$250 per year is due by August 30 of each year.

(7) For a new facility, an annual fee as established in the Code of Iowa §455B.197 is due 30 days after the new permit is issued.

c. Wastewater construction permit fees. A single construction permit fee as established in the Code of Iowa §455B.197 is due at the time of construction permit application submission.

Date

Jeffrey R. Vonk, Director

PUBLIC PARTICIPATION RESPONSIVENESS SUMMARY

FOR

**CHAPTER 64, WASTEWATER CONSTRUCTION AND
OPERATING PERMITS**

- WASTEWATER FEES RULEMAKING -

DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL SERVICES DIVISION

APRIL 24, 2006

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RESPONSIVENESS SUMMARY

This is a summary of and response to the comments received in response to the proposed addition of wastewater fees to IAC 567 Chapter 64. This document also contains recommendations for final EPC action on the proposed wastewater fees. The proposed amendments were published as a Notice of Intended Action (NOIA) in the Iowa Administrative Bulletin on November 9, 2005 as **ARC 4652B**. The Administrative Rules Review Committee requested that the Department to perform a Regulatory Analysis of the proposed fees at their December 13, 2005 meeting. The summary of the Regulatory Analysis was published in the IAB on March 15, 2006.

The amendments as proposed in the Notice would:

- Add language to clarify who current fees are made payable to and to define who the proposed fees are made payable to.
- Add fee requirements to 64.16(3)(a)(5) for NPDES General Permit No. 5 (Mining and Processing Facilities).
- Change the fee requirements in 64.16(3)(b) to remove the annual fee option for individual storm water permits, and to remove the storm water group application category, as group applications for storm water permits are no longer accepted.
- Add fee requirements to 64.16(3)(b) for construction, municipal, semi-public, operation, industrial, and animal feeding operation facilities subject to NPDES permits.
- Each type of facility will have an individual monetary amount associated with it.
- The fees will be assessed for each facility on an annual basis, with the exception of storm water individual permits, whose fees will continue to be assessed with the storm water permit application.
- No annual wastewater fees will be assessed for municipal water treatment facilities.
- A one-time application fee of \$85 will be assessed for each non-storm water application for a NPDES permit.
- The initial date of fee submission is proposed to be 30 days after the effective date of the proposed rule (effective date: June 28, 2006).

Three public hearings were held through the Iowa Communications Network with notice of the hearings sent to various individuals, organizations, and associations, and to statewide news network organizations. The hearings were held on November 29, 30, and December 1, 2005 and were broadcast from Des Moines to a total of fifteen cities across the State. Comments were received from 28 persons and organizations. Written comments were received through December 2, 2005.

A public hearing concerning the Regulatory Analysis requested by ARRC was held on April 6. Written comments were received through April 7, 2006. There were no persons in attendance at the public hearing, and no comments were received.

Twenty-eight persons or groups provided oral or written comments on the proposed amendments. The responsiveness summary addresses all of the comments received. The comments received are addressed below in terms of the issue involved. The commentators' names are listed in the Appendix.

ISSUE: Comments in Support of the Proposed Wastewater Fees

Comments:

Several comments were received in support of the proposed amendments. These comments are paraphrased below.

- DNR showed they need this money at the stakeholder meetings
- The permitting process is too long, every effort should be made to hire more permit review staff using the dedicated fees
- We are confident our clients are willing to pay the fees in return for a more efficient and timely review process
- The states that have reported fewer budget cuts in their NPDES programs are the states whose programs are more heavily supported by fees
- To remedy the daunting resource gaps, Iowa should shift the costs of implementing the NPDES programs to the regulated entities through fee programs
- Fee programs appropriately place the costs of program administration on those entities responsible for water pollution

Discussion:

We appreciate the comments in support of the proposed fees. The Department intends to use the wastewater fees to hire more permit staff in order to process permits and offer compliance assistance in a more timely manner.

Recommendation:

It is recommended that the EPC adopt the amendments to Chapter 64 as proposed.

ISSUE: The Proposed Wastewater Fees are a Tax and should be Redirected from the General Fund to DNR

Comments:

Several comments were received regarding the assertion that the proposed fees are a tax, and that the fees need to be redirected to the Department. These comments are paraphrased below.

- If the fees do not go where they are needed, they are simply another tax
- This fee is very likely a tax that must be proposed through the legislative process
- The Iowa State Attorney General should be asked for an opinion of the validity of the fee vs. what is effectively a tax
- Until legislation provides for direct payment to DNR of the fees to defray the costs of administering the NPDES program the fee is effectively a tax
- Concerned that the fees go to the general fund
- The fee monies should be put in a separate fund and not be directed to the general fund

- And new fees should be imposed only after the DNR has made legislative adjustments necessary to redirect these fees
- Propose legislation to redirect fees this year and come back next year with the rulemaking package
- A provision should be added into the proposed rule to the effect that no fees for NPDES permits will be collected until Iowa law provides for the fees to be used solely to administer the NPDES program
- Put sunset clause in rule package, if fees not redirected the rules are not effective
- The fees should be dedicated to the DNR's wastewater construction and operation permit activities
- Until the legislature provides for the NPDES fees to be deposited directly into the DNR budget and specifically targeted to the NPDES program, the rulemaking should be held in abeyance
- (There) is no guarantee that the fees will even go to DNR
- There is no guarantee that the legislature will not cut their contribution to the DNR budget by an amount equal to the proposed fees
- Dedicated permit fee programs are essential to bridging the gap between state resources and program needs (fee should be dedicated to DNR NPDES programs)

Discussion:

This fee is not intended to be an additional tax on the citizens of Iowa; rather, it is intended to fund NPDES permit writing and compliance assistance. The Department is pursuing legislation that will redirect the wastewater fees from the General Fund to the DNR.

The DNR has proposed legislation to redirect any wastewater fee from the general fund to the DNR in the past, before we developed the current rulemaking package. This legislation was not acted upon, because at the time, the Department did not have a wastewater fee structure in place. We have proposed this rule in time for the current legislative session in order to establish fees and attempt to have them redirected concurrently.

The effective date of this rule will be June 28, 2006. By that time, the 2006 legislative session will have ended, and the decision on whether to redirect the fees to the DNR will have been made. Thus, a "sunset" clause in the final rule is not appropriate. If the rule becomes effective and the fees have not been redirected from the general fund, the DNR will propose legislation in the 2007 session to redirect the fees.

Recommendation:

It is recommended that the EPC adopt the amendments to Chapter 64 as proposed.

ISSUE: The Proposed Size of the Fees is not Appropriate

Comments:

Several comments were received regarding the monetary amount of the fee. These comments are paraphrased below.

- The DNR should set fees at levels necessary to fully fund program costs
- Fees seem to be a dramatic increase, should be taken in smaller increments
- Should look at assessing a reasonable fee based on what facilities do (review what the fee is for)
- Higher fees should not be charged to semi-publics just because they don't have certified operators
- Increased fees are not size depended (AFO/CAFO too)
- Consideration should be given to a graduated fee structure that would allow applicants to pay more to have their permits renewed faster (like Minnesota)
- A graduated fee structure should be established for all annual permits
- If semi-publics need certified operators, the operators should be required and the proposed fees should be lower for the small facilities (fees should be tied to whether facilities have a certified operator or not)
- Permit fees are excessive and will not result in either better service or increase efficiency at the DNR (because the pending WQS will backlog the permits even worse than they are now)
- A study should be undertaken to determine if the variable fee scale is proportional to the administrative effort in terms of cost required by the DNR to administer the NPDES program, and costs should be documented and shared
- There is no statistics or technically verifiable information available to support the anecdotal contention that NPDES permits held by major industrial facilities require significantly more administrative effort (in proportion to the fee schedule)
- DNR should provide detailed information regarding personnel and resources devoted to permitting, monitoring, and enforcement, as well as compliance assistance (so we can determine if fee amounts are appropriate)

Discussion:

As proposed, the fees are based on the type of facility (minor, major, semi-public, open or confinement AFO, industrial, municipal), on the amount of time it takes to review and process the applications, and on how much time it takes to regulate and inspect the facilities. More time is required to review applications and draft permits for major facilities and industrial facilities than for minor and municipal facilities. Major facilities, both municipal and industrial, have several more factors to consider in their permits than minor facilities. Permit writers spend much more time gathering information and writing permits for major facilities, necessitating higher fees for those facilities.

As an example, for a major municipal facility, a permit writer must review a minimum of five permit application forms, vs. two or three for a minor facility. One of the required permit application forms for a major facility includes three rounds of effluent sampling for more than 100 parameters, and all of this data must be reviewed. For a major industrial facility, a permit writer must often review effluent data (including multiple parameters) for several different outfalls, vs. the one or two outfalls typically found in municipal permit applications. Also, industrial facilities involve more research in order to determine which pollutants need to be regulated from which waste streams.

Semi-public facilities take more oversight from compliance assistance staff than minor municipal facilities, as semi-publics often do not have a certified operator and are not under the oversight of a mayor and city council. The compliance assistance staff in Field Offices spends more time

regulating small semi-public facilities than they do regulating minor municipal facilities. Permit writers spend more time gathering information necessary for the permit application for semi-public facilities than for minor municipal facilities. Legislation was proposed by the Department to require small semi-publics to have certified operators, but it was not acted upon. The fees for semi-publics are based on the current operation of the facilities. Thus, the fees for semi-public facilities are higher than those for minor municipal facilities. If semi-publics are ever required to have operators, the fee amount could be reconsidered at that time.

As proposed, Iowa's wastewater fees are lower than those in the surrounding states. For example, under the proposed rules, a minor municipal facility would pay \$250 per year in Iowa, and \$3,000 per year in Missouri. A major municipal facility would pay \$1,500 per year in Iowa and \$31,000 per year in Minnesota. A major industrial facility would pay \$4,000 per year in Iowa, and \$6,500 per year in Minnesota.

The proposed fees were not set at a total monetary amount high enough to fully fund the NPDES program costs. Monies from the federal government and from the state general fund currently fund the program. It is not anticipated that these funding sources will decrease significantly in the future.

The DNR also did not want to impose undue costs on the entities that hold or need permits. The total proposed fee amount is high enough to supplement the existing wastewater funding sources so that the wastewater program can be improved and program goals can be met.

Rather than having a flat fee for each type of facility, the fees could have been based on the design of the facility. The DNR has the design information for all facilities, and this information is already used in the permits as a basis for monitoring requirements. Under this option, small facilities would pay less than large facilities, instead of all facilities of one type paying the same amount. Under the proposed fee structure, all facilities of one type will be charged the same amount.

The option to charge fees based on the size of the facility was presented at a stakeholder meeting in early 2005, before the fee rules were developed. Attendees at the stakeholder meeting included representatives from industries, municipal organizations, and wastewater operators. The stakeholders were concerned about a fee structure based on design flows. They were of the opinion that this type of fee structure would be too confusing. Fees based on facility design could not be looked up in the rules or on the internet, rather, each entity would be required to contact a permit writer to determine the appropriate fee for their facility. Also, facilities considering an upgrade would be required to consider higher fees when redesigning the facility. The stakeholders preferred the flat fee based on facility type, as this would be easier for entities to understand, and would be easier for the DNR to administer. They also preferred to base the fees on the relative level of effort required to issue permits and regulate each facility. Thus, for simplicity and at the recommendation of the stakeholders, the proposed rules fees were based on facility type, rather than on facility size.

Consideration was not given to allowing facilities to pay higher fees for faster processing of their applications. Allowing facilities to pay more to get their permit faster would bias the permitting system in favor of these facilities with more resources, and it could potentially cause more delays in permits for facilities who would not wish to pay the additional amount. For these reasons, the proposed fees will not be changed to allow for an extra payment for faster processing of an application.

Recommendation:

We recommend that the fees continue to be based on the type of facility, on the amount of time it takes to review and process the applications, and on how much time it takes to regulate and inspect the facilities. We also recommend that the monetary amount of the fees not be changed.

ISSUE: General Comments Opposed to the Proposed Wastewater Fees

Comments:

Some comments were received in opposition to the proposed wastewater fees that do not fit into any of the issue categories above. These comments are paraphrased below.

- It is no logic in giving all permits (GP #5 in particular) a fee just because the other are receiving a fee
- Cost of complying with a permit can be significant w/o these fees
- DNR is underfunded by legislature, the legislature should give the NPDES program the money to run properly, instead of DNR imposing funds on local governments
- All citizens should pay for this, not just those w/ permits (the legislature should fund this)
- Citizens should be able to establish their spending priorities through their elected representatives rather than the un-elected staff establishing those spending priorities
- Is bad policy to establish trust funds that avoid the legislative appropriations process

Discussion:

We are not proposing to charge fees for General Permit #5 because other NPDES permits will require fees. We are charging a fee for the general permit because it takes permit staff time to draft the general permit to meet all the regulatory requirements, to go through rulemaking authorizing the general permit, to process notices of intent, and to process the annual report on the permit. The proposed fee for General Permit #5 will support the specific program activities associated with the general permit.

We agree that the costs of complying with a NPDES permit can be significant without the addition of fees. However, it is our intention that the proposed fees will allow the Department to offer more compliance assistance in a timely manner, thus potentially reducing the costs of permit compliance by reducing potential permit violations.

As noted above, the DNR has a bill currently in the legislature concerning the reallocation of the proposed fee. The legislature has already given the DNR the authority to charge fees commensurate with program costs (see additional discussion below), but we are not attempting to bypass the legislature with these proposed rules. We agree that spending priorities should be considered by the legislature, and in the case of these proposed fees, they are. It also should be noted that the Administrative Rules Review Committee, a legislative body consisting of five senators and five representatives, reviews all of the rules proposed by the DNR. The DNR does not establish rules that bypass the legislature.

Recommendation:

It is recommended that the EPC adopt the amendments to Chapter 64 as proposed.

ISSUE: Comments Opposed to the Proposed Fees for Animal Feeding Operations (AFO), Confined and Open

Comments:

Several comments were received in opposition to the proposed wastewater fees for the animal confinement operations and open feedlots in particular. These comments are paraphrased below.

- Charging fees to AFOs goes beyond the specific authorization of the legislature, legislature was very specific in fees to run the confinement program, DNR does not have authority to add more confinement fees w/o express statutory authority
- AFO fees will result in a decrease of the farmer's income (farmers can't pass the fees along to rate payers)
- AFO fees will be another burden to farmers
- Annual fee is excessive, as DNR would not incur costs for storing the NPDES permit from year to year
- Livestock operators already fund a significant portion of the AFO program, so they should be treated differently by not having annual fees
- Proposed fee of \$400 is excessive for the common person
- Lower amounts should be considered
- Agency should provide explanation for intended use of funds from livestock industry
- Government should be encouraging cattle farming rather than discouraging it
- Government should not penalize those wishing to add value to commodities grown in Iowa
- Fee will discourage cattle feeding in Iowa
- The individual NPDES permit fee for open feedlot operations should be eliminated
- The proposed \$400 fee adds additional operating costs at a time when feedlot operators have incurred and are continuing to incur sizeable environmental compliance costs, so the fee should be eliminated
- DNR has not provided justification of the amount of staff attention to open feedlot NPDES permits to justify the annual fees
- Annual NPDES permit fee for feeding operations is excessive and unjustified
- Fees set at levels to cover the cost of the AFO program will help prevent a regulatory environment where it pays CAFOs to pollute (CAFO fees might be too low)
- Annual fee rates for CAFOs seem low
- We do not understand why confinement operations and open feedlots have different annual fees
- DNR vastly underestimates the fiscal impacts of CAFOs (permit fees for CAFOs might need to be higher)

Discussion:

While Iowa Code chapter 459, pertaining to confinement feeding operations, does authorize a specific fee for construction permit applications, it does not even mention NPDES permits. The 2005 Iowa Code Supplement Chapter 459A, pertaining to open feedlot operations, merely cross-references operating permits (including NPDES permits) but doesn't provide any authority to

require or issue them. DNR authority regarding NPDES permits is found in Iowa Code subsection 455B.174(4) and our general authority to establish a fee for permits is found in Iowa Code subsection 455B.105(11). Because DNR's authority to require and issue NPDES permits and to assess associated fees does not derive from the above-mentioned animal feeding operation statutory provisions, the DNR is not bound by the lack of specific authority to assess NPDES fees in those provisions. In addition, Iowa Code paragraph 455B.105(11)(b) implicitly recognizes that the DNR has authority to assess fees other than as specifically provided in Iowa Code chapter 459 by requiring that fees collected be remitted to the general fund, "except as otherwise required in this chapter and chapter 459..." Thus, the proposed fee for AFOs does not go beyond the authorization of the legislature, and the DNR does have the authority to charge AFO operations NPDES fees.

We have noted that the AFO fees could result in a decrease of a farmer's income. However, the necessity of regulating wastewater discharges from AFO facilities offsets the possible minor decrease in income. Also, the fees are not intended to discourage any type of feeding operation in Iowa. The fee is designed to help further regulate the feeding operations that require wastewater discharge permits, to insure that Iowa's natural resources are fully protected.

The AFO fees were set at 400 and 250 dollars for the same reasons that the municipal, industrial, semi-public, and General Permit fees were set; i.e. the AFO fees are based on the type of facility, on the amount of time it takes to review and process the applications, and on how much time it takes to regulate and inspect the facilities. The proposed AFO fees will help cover the costs of processing and issuing NPDES wastewater permits and of compliance assistance and enforcement of the NPDES permits. The current feeding operation fees do not provide enough to cover NPDES permitting and compliance assistance activity, as they were established to cover the costs of issuing construction permits, reviewing Manure Management Plan, and conducting compliance assistance and enforcement activities. The AFO fees are proposed to be collected on an annual basis so that facilities will not have to come up with the full amount each time a permit is renewed; rather, the cost can be spread over five years.

Recommendation:

It is recommended that the EPC adopt the amendments to Chapter 64 as proposed; the AFO fees should not be eliminated or changed.

ISSUE: Comments Regarding the Rulemaking Procedure

Comments:

Several comments were received regarding the rulemaking procedure and the public comment period associated with the NOIA. These comments are paraphrased below.

- All NPDES holders should have been advised of the rulemaking/hearings
- Insufficient notice was given to the public
- The NPDES permit holders were not advised of the proposed fee and associated rulemaking
- The public hearing period should be extended and all NPDES permit holders should be notified of the proposal well in advance of public hearings

- The comment period should be extended so DNR can provide the public with a more accurate accounting of its program needs and funding sources

Discussion:

The NPDES Section informed the public of the proposed amendments and public hearings on several occasions. The NOIA and public hearing schedule were posted on the DNR website shortly after the EPC approved the NOIA, in November of 2005. The proposed wastewater fees and public hearings were discussed in the water quality listserv and the EcoNewsWire sent out by the DNR in November of 2005. The Regulatory Analysis and the associated public hearing information were placed on the DNR website in March of 2006, before the Regulatory Analysis summary was published. Stakeholders meetings were held to discuss the fee structure. Stakeholder groups were notified so that they could inform their members. NOIA and a summary of the Regulatory Analyses along with public hearing information were also published in Iowa Administrative Rules Bulletin.

The large number of permit holders prohibits notifying each individual NPDES permit holder of the proposed rules. There are approximately 1500 individual NPDES permits, and the costs of mailing a notice to each permit holder is beyond the scope of the rulemaking effort.

The additional hearing required by the Regulatory Analysis effort and the associated comment period consisted of an extension of the public hearing period. However, no one attended the Regulatory Analysis public hearing, and no comments were received concerning the analysis.

Recommendation:

The NPDES Section will give consideration to these comments, and will attempt to notify more NPDES permit holders of any rule changes that affect them in the future.

ISSUE: Comments that do not Pertain to the Proposed Rules

Comments:

Some of the comments received during the public comment period did not pertain to the proposed rule changes. These comments are listed below.

- Open feedlot rules which were adopted on an emergency basis and are also currently under review by the DNR should be amended to allow open feedlot operations to utilize a general permit
- The way the rules (65.120(1)) are written, animals of the same species in open feedlots and confined structures in the same operation are added together, and with the proposed fees, the operator could end up paying annual compliance fees and an annual permit fee; the DNR should change this rule if we want to charge NPDES fees too
- DNR should not be defacto operators of semi-public facilities
- Operation permits should be required for systems that do not discharge (soil absorption systems) because this wastewater is still affecting our natural resources (and these permits should have fees)

Discussion:

AFO comments will be forwarded to DNR's AFO staff for consideration. The potential to use general permit for AFO operations will be evaluated.

As noted above, legislation was proposed in the past by the Department to require small semi-publics to have certified operators, but it was not acted upon. Until such time as semi-public facilities are required to retain certified operators, the DNR will continue to assist the current facility owners in the operation of these facilities.

Consideration will be given to requiring NPDES permits for soil absorption systems. These facilities are being constructed at an increasing rate, and the NPDES Section is currently conducting internal discussions on the regulation requirements for non-discharging facilities.

Recommendation:

Since these issues are not directly relevant to the proposed rules, no rule modifications are recommended.

APPENDIX:
COMMENTATORS

Following is a list of individuals and organizations that commented on the proposed wastewater fees during the public comment period. The commentators are grouped into similar categories and are listed in no particular order.

Government Entities:

Michael R. Beimer, City Administrator, City of Mount Vernon

Wastewater Treatment Plants:

Bob Penrod, Calmar Wastewater Superintendent

Lyle Krueger, Manager, Water Reclamation Division, City of Cedar Falls

Sanitary Sewer Services:

Hillary Maurer and Judy Krieg, Earthview Environmental Services

Non-Profit or Trade Organizations:

Christina Gruenhagen, Government Relations Counsel, Iowa Farm Bureau Federation;

Richard E. White, Executive Director, Iowa Limestone Producers Association

Michele M. Merkel, Senior Counsel, Environmental Integrity Project

Garry Klicker, Board President, Iowa Citizens for Community

Pamela Mackey Taylor, Chair, Iowa Chapter Sierra Club

Mindy Larsen Poldberg, Director of Government Relations, Iowa Corn Growers Association

Iowa Pork Producers Association

Iowa Cattlemen's Association

Businesses:

Ron Albis, Paul Nieman Construction Co.

Sherman Lundy, Geologist, Basic Materials

Jerry Rattenborg, IIW Engineering

Edward H. Brinton, P.E., Randy L. Krutzfield, P.E., and Cary J. Solberg, P.E., of MMS Consultants, Inc.

Private Citizens:

George K. Hellert, P.E.

Beth Beswick-Todd

Anita Fluit

Robert E. Beswick

Jeff Clausen

Joe Greig

Therese Hart Beswick

John Fluit Jr.

Nicholas B. Hunt